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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/23

Addendum

Visit to India

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	2
I. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF	5 - 16	2
A. Constitutional provisions	5 - 9	2
B. Other provisions	10 - 16	4
II. IMPLEMENTATION OF LEGISLATION AND POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF	17 - 79	5
A. Situation of Muslims	30 - 54	8
B. Situation of Christians	55 - 70	12
C. Situation of Sikhs	71 - 79	15
III. CONCLUSIONS AND RECOMMENDATIONS	80 - 98	17
Annex I - A Brief on Ayodhya		21

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INTRODUCTION

1. At the invitation of the Indian Government, the Special Rapporteur on the question of religious intolerance visited India from 2 to 14 December 1996 in accordance with his mandate.

2. In the course of his visit, the Special Rapporteur travelled to Delhi (2 and 3, 9 and 10 and 14 December), Bombay (4 and 5 December), Jammu (6 and 7 December), Srinagar (7 to 9 December), Chandigarh (11 and 12 December) and Lucknow and Ayodhya (13 and 14 December) to meet officials at the federal level (from the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Justice, Ministry of Education, governors, etc.) and the State level (in particular the Prime Minister of each Indian State visited). Furthermore, he had talks with members of the National Human Rights Commission, the National Minorities Commission, the Supreme Court, religious and political representatives of minorities, independent personalities and representatives of non-governmental organizations (NGOs). He also visited many places of worship, including Babri-Masjid and Charar-E-Sharief, as well as schools.

3. The Special Rapporteur sincerely thanks the Indian authorities for having invited him and expresses appreciation of the efforts made and the desire for cooperation that was evident throughout his mission. He is also very grateful to the various high-level officials whom he met during his visit as well as to representatives of the United Nations Development Programme (UNDP) and various United Nations agencies.

4. During his visit, the Special Rapporteur made a careful study of legislation in the field of tolerance and non-discrimination based on religion or belief and its implementation, as well as current policies in respect of religious matters. As a result, he prepared various conclusions and recommendations in the light of factors connected with the application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief.

I. LEGISLATION IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

A. Constitutional provisions

1. General

5. The preamble to the Constitution solemnly proclaims India's commitment to democracy and secularism, guaranteeing to all citizens freedom of religion and belief as well as the right freely to practise religion.

6. Several of the persons with whom the Special Rapporteur spoke explained that Indian secularism should not be interpreted as anti-religious or reflecting opposition between the State and religion, but implied equality of rights for all regardless of their religion, and in particular the exercise of religious freedom, tolerance and non-discrimination based on religion or belief.

7. The implications of the freedom of religion guaranteed under the Constitution are as follows:

(a) Equality before the law (art. 14 of the Constitution);

(b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (art. 15 of the Constitution);

(c) Equality of opportunity in matters of public employment (art. 16, para. 2 of the Constitution states that "No citizen shall, on grounds only of religion ... be ineligible for, or discriminated against, in respect of any employment or office under the State"; the State may, however, take steps to reserve certain posts or jobs for disadvantaged classes of citizens);

(d) Freedom of conscience and free profession, practice and propagation of religion (according to art. 25 of the Constitution, the practice of religion is subject to public order, morality and health, as well as respect for the laws in force);

(e) Freedom to manage religious affairs (art. 26 of the Constitution states that every religious denomination or any section thereof has the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with the law);

(f) Freedom as to payment of taxes for the promotion of any particular religion (art. 27 of the Constitution);

(g) Freedom as to attendance at religious instruction or religious worship in certain educational institutions (according to art. 28 of the Constitution, no person attending any educational institution recognized by the State or receiving aid out of State funds is required to take part in any religious instruction or to attend any religious worship).

2. Provisions specific to minorities

8. According to article 30, paragraphs 1 and 2 of the Constitution, all religious or linguistic minorities have the right to establish and administer educational institutions of their choice. Furthermore, the educational institution of a minority may not be discriminated against when the State grants aid to educational institutions. Under article 29 of the Constitution, citizens have the right to conserve their own language and script.

3. Specific provisions on the abolition of untouchability

9. Article 17 of the Constitution states that untouchability is abolished and that its practise in any form is forbidden and punishable in accordance with the law. To this end, article 35 (a) (ii) confers upon Parliament the exclusive power to make laws for prescribing punishment for those acts which are declared to be offences within the meaning of chapter III of the Constitution. In the exercise of the powers conferred upon it by this article, Parliament has promulgated the Protection of Civil Rights Act. Section III of this Act specifically provides for the punishment of anyone who, on the basis of untouchability, prevents any individual from entering a

place of public worship open to persons professing the same religion or branch of religion as that person or adopting, offering prayers or celebrating any religious service in any place of public worship.

B. Other provisions

1. Penal Code

10. India's Penal Code prohibits and punishes any violation of tolerance and non-discrimination based on religion or belief:

(a) Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony (sect. 135 A) on particular offence committed in a place of worship (sect. 135 A (2));

(b) Injuring or defiling a place or worship with intent to insult the religion of any class (sect. 295);

(c) Deliberate and malicious acts intended to outrage the religious feeling of any class by insulting its religion or religious beliefs (sect. 295 A);

(d) Disturbing religious assembly (sect. 296);

(e) Disturbing burial places (sect. 297);

(f) Uttering words, etc., with deliberate intent to wound religious feelings (sect. 298);

(g) Statements conducting to public mischief (sect. 505).

2. The Unlawful Activities (Prevention) Act, 1967

11. The Unlawful Activities (Prevention) Act, 1967 inter alia provides for declaring associations as unlawful whose activities are against the sovereignty and territorial integrity of India and are prejudicial to communal harmony. Such associations can be declared unlawful for a period of two years, subject to confirmation of notification by the Tribunal, headed by a sitting judge of a high court. The Act provides for sealing of the premises and freezing of the accounts of the unlawful associations. The Act also provides for penalties for offences such as being members of unlawful associations, dealing with the funds and use of the premises of unlawful associations, indulging in unlawful activities etc., committed by various persons.

3. The Religious Institutions (Prevention of Misuse) Act, 1988

12. This Act provides for prevention of misuse of religious places for political and criminal activities. The Act prohibits, among other things, the use of any premises of any religious institution for any act which promotes or attempts to promote disharmony or feelings of enmity or hatred between different religious, racial, language or regional groups. Violations under the Act are punishable with imprisonment for up to five years and with a fine of up to Rs. 10,000. A person convicted for an offence under the Act will be

removed from his office or post and will be disqualified for appointment in any religious institution as manager or in any other capacity for six years.

4. The Places of Worship (Special Provisions) Act, 1991

13. This Act inter alia provides for prohibition of conversion of any place of worship of any religious denomination into a place of worship of a different religious institution and for the maintenance of the religious character of places of worship as it existed on 15 August 1947. Violations under the Act are punishable with imprisonment for a term of up to three years and also a fine. A person convicted of an offence under the said Act shall be disqualified for being chosen as, and for being, a Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a state.

5. The Representation of the People Act, 1951

14. Under this Act, no member of a religious order may stand for election. The fact that a candidate or one of his agents calls upon someone to vote or to abstain from voting by playing on his religion, or using religious symbols as a means of promoting that candidate's election prospects or of adversely influencing the election of a candidate constitutes a corrupt practice that debases the election and an offence punishable under the law.

15. The Special Rapporteur was also informed by the Secretary of the Ministry of Home Affairs that a bill was being drafted to prevent political parties from turning religion to political account after the elections.

16. Most of the officials and non-government representatives with whom the Special Rapporteur spoke emphasized that India had no need of additional laws in the field of religion although they recognized that the application of existing legislation did raise problems.

II. IMPLEMENTATION OF LEGISLATION AND POLICY IN THE FIELD OF TOLERANCE AND NON-DISCRIMINATION BASED ON RELIGION OR BELIEF

17. The Special Rapporteur had talks with various persons about the situation of the minorities officially recognized by the Indian Government 1/ namely, Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis).

1/ Government of India, Ministry of Welfare, Shastri Bhavan, New Delhi, dated 23 October 1993, Notification: S.O.NO.816 (E). In exercise of the powers conferred by clause (c) of section 2 of the National Commission for Minorities Act, 1992 (19 of 1992), the Central Government hereby notifies the following communities as "the minority communities" for the purposes of the said Act, namely:

1. Muslims
2. Christians
3. Sikhs
4. Buddhists
5. Zoroastrians (Parsis)

18. Recent statistical data on minorities could not be obtained. However, the main minorities, in descending order of strength, were Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). The Indian authorities communicated to the Special Rapporteur a population profile table (see table 1) indicating the results of the 1971, 1981 and 1991 censuses of the Hindu, Muslim, Sikhs and other populations residing outside Jammu and Kashmir and revealing changes in their numbers over the years. It reveals that by far the largest minority is the Muslim community, whose growth rate is exponential.

19. The authorities state that the most recent census in Jammu and Kashmir took place in 1981; no census could be carried out in 1991 owing to local conditions. The table of the 1991 results accompanied by an information note was communicated by the Indian authorities (see table 2).

Table 1

Population profile

Census year					
Community (India, excluding Jammu and Kashmir)	1971	1981	1991	Composition %	Increase from 1971 to 1991 %
Hindus	452 032 338	547 849 033	687 646 721	82	52.12
Muslims	58 378 140	71 668 988	101 596 057	12.11	74.03
Sikhs	10 273 018	12 944 471	16 259 744	1.94	58.28
Others	22 859 524	26 837 968	33 081 466	3.94	44.71
Total	543 543 020	659 300 460	838 583 988		54.28

Table 2. Population of Jammu and Kashmir

1981 Census				
	Region			
Religious denomination	Kashmir	Ladakh	Jammu	Total
Hindus	1 24 078	3 538	18 02 832	19 30 448
Muslims	30 76 033	61 883	8 04 637	38 30 448
Sikhs	33 177	334	1 00 164	1 33 675
Christians	466	237	7 778	8 481

1981 Census				
	Region			
Religious denomination	Kashmir	Ladakh	Jammu	Total
Buddhists	189	68 376	1 141	69 706
Jains	62	-	1 514	1 576
Other religious groups	-	5	39	44
Religion not stated	-	-	8	8
Total	31 34 904	1 34 372	27 18 113	59 87 389

Note. In Jammu and Kashmir, the last census was held in 1981. No census could be held in 1991 owing to the disturbed conditions in that State, The projected population of Jammu and Kashmir as of 1991 is 7,718,700.

20. It may be added that, since 1981 and owing to the conflict affecting Jammu and Kashmir, the size of the non-Muslim and Hindu minorities has declined owing to departures to other Indian States.

21. The Special Rapporteur has refrained from presenting an in-depth analysis of the Buddhist and Zoroastrian minorities in this report. Several interviews with authorities, NGOs and the religious representatives of these communities revealed that there are no problem situations, either on the religious level or in society in general. These minorities which, moreover, are the smallest, exercise their religions freely, possess an adequate number of places of worship and religious publications, and refrain from proselytizing among other communities. Both these communities are fully integrated in society, but at the same time keen on preserving their cultural and religious identity. In this connection, the Parsi minority is one of the most active and prosperous in India, both in the economic field as well as in terms of private school establishments, and also one of those that attaches the greatest importance to maintaining itself as a specific and distinct ethnic and religious community.

22. The Special Rapporteur has, on the other hand, analysed the situation of the Hindus, who account for the majority of India's population, through his examination of Muslim, Christian and Sikh minorities and their relations with the State and society.

23. The situation of the Hindu community appears to be satisfactory, both in religious as well as civil matters and in general its characteristic feature is broad tolerance. However, exceptions to this general rule and isolated signs of intolerance have been highlighted in this report under the heading of untouchability and religious extremism.

24. On the subject of untouchability, it is clear that the iniquitous system of castes, legally abolished but maintained in practice, gives rise to intolerance of this large category of Hindus. Some consider that this intolerance is based on religious principles inherent in Hinduism, according to which the untouchables are impure, whereas others consider that it reflects purely social considerations. Regardless of its basis, specific cases of this intolerance in the field of religion have been reported, particularly of untouchables being refused access to temples in remote rural areas.

25. Hindu extremism, on the other hand, is a flagrant manifestation of intolerance which seems to be explained by the denaturalization of the Hindu religion and its exploitation for political purposes.

26. However, the Special Rapporteur notes not only the existence of legislation and a policy resolutely directed at the abolition of untouchability, which at the present time is more of a social and economic problem, but also the fact that although Hindu extremism is certainly present, it is marginal and political and not religious.

27. The Jammu and Kashmir conflict has also, owing to anti-Hindu extremism, resulted in the expulsion of Hindus and their settlement in refugee camps. This conflict could affect Hindu tolerance of other communities.

28. Apart from these problematical questions, it would seem that the situation of Hindus and their relations with non-Hindus are in general positive.

29. The Special Rapporteur has in turn analysed the situation of the Christian, Muslim and Sikh minorities in their relations with the State and society, not only in the field of religion but also in other fields (political, socio-cultural, educational, professional, etc.)

A. Situation of Muslims

30. Muslims constitute India's largest minority as well as the second largest Muslim community in the world after that of Indonesia and before that of Pakistan.

1. The religious field

31. The Special Rapporteur wanted to make an allowance, in analysing information on Jammu and Kashmir - owing to the special nature of this State which has the largest Muslim community - for the armed conflict which has been raging there for a number of years. In any event, the situation of Muslims in that State is clearly different from that of Muslims in other Indian States.

(a) Religious practice and conduct of religious affairs

32. Referring to Indian States other than Jammu and Kashmir, the religious and lay representatives of the Muslim community as well as NGOs stated that they had not observed any action on the part of the authorities designed to restrict religious activities. They drew attention to their status as a legally recognized minority and the rights to which such recognition gave

rise, particularly freedom of religious practice and freedom to organize their services according to their codes, religious teachings and customs.

33. They nevertheless stressed the upsurge of Hindu extremism to which Christian representatives had also drawn attention (see paras. 56 to 62 below), and which takes the form of violence against places of worship (see paras. 37 to 51 below).

34. The Special Rapporteur received contradictory information concerning Jammu and Kashmir. According to an initial source, the Indian authorities were following a policy of intolerance, religious discrimination and even religious repression against a Muslim population which was seeking independence and/or union with Pakistan in order to be able freely to practise Islam and manage its religious affairs.

35. According to several non-government and official sources, the authorities were trying to provide Muslims with guarantees of their freedom of belief and religious practice. However, the religious situation was said to be seriously affected by the armed conflict in Kashmir as a result of the extremism of a minority of terrorists, Indians and foreigners, financed, trained and supported by Pakistan in order to achieve union with the latter. The conflict was said to be not religious but political, and one in which religion was being manipulated to achieve ends that had absolutely nothing to do with it.

(b) Religious education

36. In accordance with the relevant constitutional provisions on religious minorities, the Muslim community has its own educational establishments, including the madrasa religious schools responsible for disseminating the teachings of Islam. Jammu's State authorities considered the situation as regards religious instruction to be satisfactory, although they drew attention to cases in which the madrasa had been officially closed for having promoted extremism in Jammu and Kashmir.

(c) Places of worship and religious property

37. Muslims in the Indian States, apart from Jammu and Kashmir, possess a large number of places of worship as well as a body called the Waqf Board responsible for the management of property belonging to religious communities and charitable institutions.

38. However, it is said that more places of worship and/or their enlargement is necessary, particularly in Bombay. The authorities have recognized the Muslim community's need for mosques in Bombay - a need which is pointed up during Friday prayers by the presence of the faithful praying in the streets owing to the small size of places of worship. They admitted that this shortcoming could be explained by the interminable administrative formalities connected with the construction or enlargement of mosques, and noted that it was basically due to red tape, demographic pressure and road traffic density which aggravated the situation.

39. Many of the persons with whom the Special Rapporteur spoke drew his attention to several places of worship that had been destroyed.

40. The Special Rapporteur was supplied with abundant information concerning the destruction, on 6 December 1992, of Babri-Masjid at Ayodhya and realized that this tragedy had deeply traumatized the Indian people and their various religious communities. The background of these events and of the controversy surrounding this religious site which is a bone of contention between Muslims, who venerated it as a mosque, and Hindus who were trying to build a temple on what is said to be the birthplace of the Hindu god Ram, were the subject of several communications addressed by the Special Rapporteur to the Indian authorities [communication of 10 November 1993 (E/CN.4/1994/79); and communication of 5 September 1994 (E/CN.4/1995/91)].

41. Most of the information collected during the visit to India confirmed the responsibility of the State Government at the time and of the ultra-nationalist Hindu Vishwa Hindu Parishad (VHP), Bajrangdal and Bharathiyo Janata (BJP) and Rashtriya Swayamsevak Sangh (RSS) parties, whose members had infiltrated the crowd, planned the destruction of Babri-Masjid and brought about the death of Muslim demonstrators, the pillage of Muslim houses and shops as well as the Bombay riots (see paras. 52-54 below), by setting the religious stakes ever higher in order to gain political advantage among the population.

42. The Special Rapporteur noted the determination with which the central authorities reacted; they had dispatched security forces which, unfortunately, the State authorities had deliberately refrained from using; then, after having energetically condemned the incident they had dissolved the Government of the State on 6 October 1992 - the very day of the attack.

43. Apart from the written replies of the authorities to the Special Rapporteur's communications (E/CN.4/1994/79 and E/CN.4/1995/91), an official note, updating the measures taken following the destruction of Babri Masjid, was transmitted to clarify this extremely sensitive matter (see annex).

44. In the light of the information received, the Special Rapporteur notes that the appeal concerning the ownership of this religious site is still pending before the Supreme Court. However, it would appear that this highly symbolic and emotionally and religiously charged question cannot be resolved simply by the settlement of a purely property dispute. The fact that its settlement will take time admittedly offers a breathing space, but it might also consolidate and render irreversible a new de facto situation, since a shaky structure used as a Hindu temple and a place of worship remains on the ruins of Babri Masjid.

45. According to official and non-government observers, the destruction of Babri Masjid was an incident, an aberration, the result of the political exploitation of religion by ultra-nationalist political parties, and cannot be interpreted as evidence of an official policy of religious intolerance directed against Muslims.

16. Yet the Special Rapporteur is concerned about the possible repetition of such incidents at places of worship that are disputed by Muslims and Hindus, and in particular at the Matura mosque that is claimed by ultra-nationalist Hindu parties as being the birthplace of Krishna. It is to be feared that something in the nature of the Ayodhya incident will recur in the event of political exploitation of a situation or the unconditional acceptance of the logic - real or hypothetical - that history is reversible.

47. The authorities have stated that Ayodhya had a socially cathartic effect, created awareness of the danger of the political exploitation of religion and that, therefore, the traumatism experienced by the population should make it possible to prevent further incidents of that nature.

48. On the subject of Jammu and Kashmir, religious and secular representatives of Jammu stated that the enlargement and restoration of places of worship were hampered by the presence of sympathizers of ultra-nationalist Hindu parties in the administration.

49. Several instances of attacks in the context of the armed conflict against places of worship namely, Mosques and in particular the Charar-e-Sharief sanctuary which was destroyed on 11 May 1995, were reported. According to one source of information, this place of Muslim worship was deliberately destroyed by the Indian armed forces. Its destruction allegedly reflected a policy of repression directed against the Muslim community. According to other non-government and official information, the sanctuary has been occupied since February 1995 by "foreign mercenaries" who had entered it by disguising themselves as pilgrims and concealing their weapons. The Indian Government had allegedly shown moderation in order to spare Charar-e-Sharief, a fragile wooden structure. It was said that the sanctuary had been surrounded by security forces and that the occupants had been called upon several times to cross the demarcation line. However, they allegedly set fire to and dynamited houses and the sanctuary before fleeing. According to the authorities, messages passed between the occupants and their "Pakistan masterminds" had been intercepted and revealed that the destruction of the sanctuary was part of a plan to destabilize the region on the occasion of the Ai-D-Al-Izha religious festival. It was said that the occupants in question belonged to the Harkat Ul Ansar and Hizbul Mujahideen movements financed by Pakistan.

50. It is said that the authorities immediately ordered relief and rehabilitation measures for the victims whose personal belongings had been destroyed. The inhabitants of Charar-e-Sharief had allegedly refused the assistance proposed by the authorities and had organized a collection among Muslims in order to rebuild the sanctuary.

51. During his visit, the Special Rapporteur noted the impressive security detail deployed around places of worship that had been attacked. Once again, he observed that religious property, and in particular places of worship, were being held hostage for political reasons.

2. Other fields

52. The integration and development of the Muslim minority within Indian society is a process that entails rough going owing to the violent armed conflict in Jammu and Kashmir and also to Hindu political extremism, the common denominator of these two factors being the exploitation of religion for political purposes, which is an alien practice and detrimental to Indian Muslims and to Islam.

53. The particular circumstances prevailing in Jammu and Kashmir are giving rise to concern regarding the future of Muslims in Kashmir. In several respects they seem to have become hostages in a conflict primarily involving two countries: India and Pakistan. In addition, and throughout India as a whole, the destruction of Babri Masjid and the intercommunal rioting in Bombay (see the communications from the Special Rapporteur mentioned above) have deeply traumatized Muslims. This traumatism, which is still being experienced, calls in question the peaceful coexistence of the communities within Indian society.

54. These painful experiences also throw light on weaknesses within the Muslim community. The latter must invest more in the education of its members to enable them to participate more actively within India and within civil society, particularly in Jammu and Kashmir.

B. Situation of Christians

55. According to the information received, Christians constitute the second largest minority in India.

1. Religion

(a) Practice of religion and conduct of religious affairs

56. The religious and civil representatives of the Christian communities have stated that, generally speaking, the authorities do not interfere with their internal religious activities, which may be carried on freely. This is true in particular of the practice of worship and religious traditions and of the management of the affairs of each religious institution.

57. However, attention was also drawn to the existence of Hindu extremism, encountered in varying degrees within ultra-nationalist political parties or parties attracted by ultra-nationalism (RSS, VHP and BJP).

58. It appears that in some States Christians are affected - marginally, but in a tangible and negative fashion - by this Hindu extremism. It is said that their proselytizing activities are sometimes hampered by abusive official interpretations of legislation prohibiting all forced conversion, or by accusations of obtaining conversions by offers of material benefits, and thus of exploiting hardship. To give one example: a BJP official is alleged to have stated that Mother Teresa was interested not in the welfare of the poor but in their conversion to Christianity. It appears, too, that in certain

cases foreign missionaries have encountered administrative obstacles when seeking Indian entry visas. Finally, examples were quoted of restrictions on transfers of foreign funds destined for Christian institutions in certain States, including the State of Maharashtra.

59. However, these manifestations of intolerance and discrimination based on religion, which find their source in Hindu extremism and its increasing influence on society and the authorities stand in contrast to the generally satisfactory position of Christians (including foreign clergy) with regard to proselytism and religious activities in general. The Special Rapporteur was able to observe that foreign missionaries in India are proselytizing actively and openly. As regards conversions, it should be observed that the majority of cases occurred in the past, some of them entailing changes of religion in exchange for material benefits.

60. In this connection the Special Rapporteur also wishes to describe the situation of the untouchables converted to Christianity. Although there is no general tendency at the present time for Hindu untouchables to convert to Christianity (conversions are by isolated individuals, mainly to escape the iniquitous caste system), an active lobby of converted Dalits is protesting against the withdrawal of State measures benefiting untouchables (reservation of positions in the public education system, reserved jobs in State enterprises as part of a "positive discrimination" programme designed to facilitate the economic and social integration of untouchables) when they convert to a non-Hindu religion; they consider that this practice constitutes an obstacle to conversions.

61. According to the information received, the State appears to be endeavouring to improve the situation of converted untouchables, while paying due regard to the concept of citizenship. The Secretary of the Ministry of Law in Delhi, in particular, has pointed out that the conversion of a Hindu untouchable to another religion gives rise to the loss, not of rights, but of privileges. The National Human Rights Commission explained that the demands of the Christian Dalits were of recent origin inasmuch as previously, by rejected their former status as untouchables, they had declined all State aid. It added that the Government was prepared to meet this demand at a future date and that an appropriate proposal was before Parliament.

62. The Special Rapporteur was also informed of the situation of Christians in Kashmir. In the context of the armed conflict which affects every Indian citizen, regardless of his religion, isolated cases of intolerance on the part of Muslim extremists punishing the very few Muslims who do convert to Christianity did occur; nevertheless, it appears that the Christian minority can carry on its religious activities freely.

(b) Religious instruction

63. In accordance with the provisions of the Constitution, the public schools provide education which is secular and non-religious but respectful of religions, particularly in the context of courses on general ethical principles. Minorities can establish their own schools; these include schools

providing a general education but in addition offering religious instruction for Christian pupils (subject to parental agreement) and instruction in ethics for non-Christians, and also religious establishments such as seminaries providing religious instruction.

64. The State performs a supervisory function to ensure that curricula and teaching materials are not used to impart anti-constitutional principles of intolerance and discrimination based on religion or belief.

65. According to the information received, no difficulties affecting the religious instruction of the Christian minority have arisen. It appears, however, that Hindu extremists occasionally attempt to stir up trouble within Christian institutions.

(c) Religious publications

66. Both the religious and lay representatives of Christians emphasized their complete freedom regarding the production and dissemination of religious publications (including the Bible).

(d) Places of worship

67. The situation of Christians with regard to places of worship seems generally favourable. Isolated cases of obstacles to the construction of places of worship, in the form of excessively slow administrative approval procedures have, however, been observed, particularly in the State of Maharashtra. The authorities drew attention to the principle of freedom to construct places of worship and the fact that States must refrain from abusive interference with such construction. They also recognized that there had been delays in the issue of building permits. However, it was explained that the problem was of a purely bureaucratic nature and that all communities had been affected. Apart from these difficulties which had been reported in some States, it appeared that the Christian minority had an adequate number of places of worship.

2. Other areas

68. Generally speaking, the Christian minority appears to be well integrated into Indian society, particularly from the standpoint of the education of its members, which is clear from the large number of Christian schools of a high standard that are open to all religious communities.

69. Mention must, however, be made of the activities of the extremist Hindu parties, which are attempting to undermine the communal and religious harmony which exists in India by the political exploitation of religion. Occasionally the militantism of these extremists significantly (although marginally) affects the situation of Christians in the religious field and within society in general. The Special Rapporteur was informed of isolated cases of murders of and attacks on members of religious orders, including nuns in Bihar and Kerala.

70. Notwithstanding these manifestations of intolerance reflecting Hindu extremism and some very rare cases of Muslim extremism in Jammu and Kashmir, the Special Rapporteur considers that the situation of the Christian community is in general satisfactory.

C. Situation of Sikhs

71. In India as a whole the Sikhs are a minority (about 1.94 per cent of the population in 1991); but in Punjab they constitute a majority (about two thirds) of the inhabitants.

1. The religious field

72. During his consultations the Special Rapporteur received information of two diametrically opposite types on the Sikhs (particularly in Punjab).

73. On the one hand, political representatives and persons of standing in civil society stated that the Sikh minority is the victim of a policy of intolerance and discrimination based on religion pursued by the authorities. Some individuals even referred to a policy of religious repression, which reached a climax in June 1984 with the attack by the Indian armed forces on the Golden Temple (Harmandir Sahib), a Sikh religious sanctuary in Amritsar, followed by reprisals against Sikhs throughout India, and particularly in Delhi, after the murder of Indira Gandhi on 31 October 1984 by Sikh bodyguards to avenge her decision to attack the Golden Temple. It was alleged that the Sikh minority was being subjected to State terrorism, which found expression not only in the desecration of holy places but also in murders, summary and extrajudicial executions and forced or involuntary disappearances of Sikh believers. The same individuals stated that this policy based on religion and its manifestations, particularly in the economic and social fields, had recently become less violent but was still being pursued by indirect means, such as the continuing presence of Indian security forces at the Golden Temple and the measures taken with regard to the civil service (see para. 79 below).

74. According to a second source of information (including non-governmental and religious organizations and the authorities), the conflictual situation which had arisen in Punjab had no religious basis; it was purely political. In actual fact the authorities were combating the development of a militant Sikh terrorist movement campaigning for a separate and autonomous Sikh state, which had first appeared in 1978; it was financed by the Sikh diaspora (and even by Pakistan) and was using religion to secure the support of Sikhs and as an easy means of whipping up their passions in favour of a purely political cause. Certain Sikh political parties had exploited that situation for their own ends in the hope of obtaining advantages and concessions from the authorities and of increasing their influence among the Sikh population by creating confusion between religious and political matters.

75. According to these observers, the conflict in Punjab is the outcome of socio-economic factors (conflict between different States over the sharing of water, which is vital for the rural economy of Punjab), external factors (support by the Sikh diaspora of the extremism of a fanatical minority; destabilizing role played by Pakistan) and divisive elements within the Sikh community itself (dissension within the Sikh political parties, some of which

had assigned themselves the task of safeguarding the political and religious identity of the Sikhs; rejection by a number of senior members of the Sikh religious community of this attempt to politicize religion, etc.).

76. Their conclusion was that religion had, in a manner of speaking, become a hostage and was being exploited for political ends.

77. As regards the Golden Temple, these sources explained that the purpose of the "Blue Star" operation undertaken in June 1984 had been to expel armed Sikh extremists from the sanctuary. There had been no intention of attacking the religious identity of the Sikhs. Moreover, that incident had not given rise to any intercommunal clashes in India. On the subject of the continued presence of security forces at the Golden Temple, the authorities stated that it in no way hindered entry into the place of worship - which was frequented by Sikhs in large numbers - but that it was in fact necessary to remain vigilant against any possible attempt at destabilization by foreign and extremist forces.

78. These sources thus concluded that there was no religious problem, at the same time emphasizing that the Sikh minority enjoyed all its constitutional rights in the field of religion, including freedom of belief, freedom to practise their religion and freedom to proselytize, in addition to the protection and safeguards of rights granted to religious minorities. In particular, the Punjab authorities stated that:

> "The Federal and State Governments are secular in this country. The State Government of Punjab always ensures to provide freedom of conscience and the right to profess, practise and propagate every religion and a right to establish and maintain religious institutions to manage their religious affairs. The people living in Punjab are having/practising their religions both individually and jointly. The Government is also always trying to promote communal harmony by arranging functions at the district level. The people of every sect are free to celebrate their religious functions and holidays are declared rather liberally by the State Government of Punjab for religious processions. So there is no religious intolerance in the State of Punjab and there has never been any outbreak of communal riots leading to loss of life in the State of Punjab."

2. Other fields

79. On the basis of all the information received and a detailed study of the documentation it appears that the situation of the Sikhs in the religious field is satisfactory, but that difficulties are arising in the political (foreign interference, terrorism, etc.), economic (in particular with regard to sharing of water supplies) and even occupational fields. Information received from non-government sources indicates that discrimination does exist in certain sectors of the public administration; examples include the decline in the number of Sikhs in the police force and the absence of Sikhs in personal bodyguard units since the murder of Indira Gandhi. The authorities have refuted these allegations and have emphasized that admission to the civil service is by competition open to all, irrespective of religion. Dysfunctions

in the administration of justice were also described, but they appear to have been connected with the anti-terrorist campaign rather than the Sikh beliefs of the accused persons.

III. CONCLUSIONS AND RECOMMENDATIONS

80. The Special Rapporteur first of all considered the legislation in the field of tolerance and non-discrimination based on religion or belief (sect. 1), and secondly the implementation of that legislation and the policy in force (sect. 2). His analysis covered the Christian, Muslim and Sikh minorities in the religious and non-religious fields and their relationships with society and the State.

81. After careful thought, and on completion of the study and his consultations, the Special Rapporteur considers that the situation in India with regard to tolerance and non-discrimination based on religion is, generally speaking, satisfactory. He also considers that the democratic functioning of political institutions, notwithstanding objective difficulties and a few setbacks, remains a fundamental element making for tolerance and non-discrimination. While the situation is generally favourable, exceptions do exist and should be prevented and remedied.

82. The Special Rapporteur has sought to shape his conclusions and recommendations by identifying the factors that prevent or create manifestations of intolerance and discrimination in the religious field.

83. The maintenance of tolerance and non-discrimination in India cannot be dissociated from the implementation of human rights in general. The promotion of human rights is impossible in the absence of democracy and development.

84. The promotion of human rights, including the right to freedom of religion, tolerance and non-discrimination, therefore entails simultaneous action on two fronts: firstly, action to consolidate and protect democracy as an expression of human rights in the political field, and secondly, action to contain and gradually eradicate extreme poverty and to promote the right to development as an expression of human rights and of solidarity among human beings in the economic, social and cultural fields.

85. As regards the first aspect, the economic and social structure of India is not always conducive to religious tolerance. Indian society is marked by a rigid hierarchical social stratification which divides the country into two nations: the one comprising the majority, who are poor, uneducated and illiterate, particularly in rural areas, and the other, consisting of the minority which holds the reins of power and forms the economic, social and cultural élite. Notwithstanding the formal abolition of castes under the Constitution and legislative instruments, this iniquitous system seems in general to persist in practice on account of domestic factors reflecting the weight of history and resistance to change, and also of international factors deriving from a world economic order which leaves the Indian authorities little freedom of action. Admittedly, the great economic and social disparities in India are not based on religion and affect everybody, irrespective of belief. However, the economic and cultural poverty of the most disadvantaged is a fertile breeding-ground for the development of

religious extremism and, more generally, for the political exploitation of religion; this is evidenced by the conflicts in Jammu and Kashmir and Punjab, the destruction of Babri Masjid and the intercommunal riots in Bombay.

86. Thus the maintenance of religious tolerance presupposes not only economic development, education and a campaign against poverty in order gradually to eliminate the caste system which still survives in practice, but also more informed participation in political life and greater participation in economic life by the population as a whole as a means of preventing the political exploitation of religion to the detriment of tolerance and communal harmony.

87. It also requires action at the political level to safeguard democracy and, more particularly, to combat extremism.

88. As regards this second political aspect, the factors unquestionably making for religious tolerance in India include the country's commitment to democracy; sound democratic institutions, legislative and government measures contributing to a culture of tolerance and serving to integrate all the components of Indian society; and a conception of secularism implying not the rejection of religion but equality for all religions. This democracy, which constitutes a source of religious tolerance, is based on a culture and tradition of tolerance promoted by Gandhi, who fought for the freedom, not of a specific group, but of everyone.

89. India's political commitment to "unity in diversity", by which it seeks to make viable a democracy covering a subcontinent and embracing a society which is multireligious and multilingual (and therefore differentiated, diversified and complex) is certainly an example which the country is offering to humankind and which reflects a mode of democratic organization of society based on respect for and viability of diversity, particularly in the field of religion.

90. However, as shown by the traumatic situations in Jammu and Kashmir, Punjab and at Babri Masjid, as well as by the intercommunal rioting in Bombay, this democratic structure, which is conducive to tolerance and community and religious harmony, is susceptable to attack on account in particular of factors connected with extremism and with international relations. The impact of these factors is all the more marked as they are associated with the religious intolerance stemming from India's economic and social characteristics as described earlier and are based on the exploitation of religion to further a programme which is in fact political.

91. In order to neutralize and eradicate these factors steps must be taken to increase awareness of the existence and dangers of extremism because, despite the fact that it is confined to a minority, its influence on the masses through political parties, places of worship, schools and even seats of power, could well destroy community and religious harmony in India. With a view to safeguarding religious tolerance and thus ensuring the protection of the rights and freedoms guaranteed by law to religious communities (freedom of belief, freedom to practise a religion and therefore to proselytize, to change religion, etc.), the Special Rapporteur wishes to make certain recommendations designed to combat extremism of all kinds.

92. The Special Rapporteur considers it essential that the Representation of the Peoples Act, 1951, should be scrupulously implemented and that in addition it should be speedily supplemented by a new act debarring political parties from the post-election use of religion for political ends. As the riots in Ayodhya, Bombay and Punjab have shown, religious parties, spokesmen and standard-bearers are not always of a nature to promote tolerance and human rights.

93. The Special Rapporteur also considers that places of worship should be used exclusively for religious, and not political, purposes. As places for prayer and meditation, they should be protected against tension and partisan struggle. The State should therefore ensure that places of worship remain neutral ground and are sheltered from political currents and ideological and partisan controversy. In this connection the Special Rapporteur urges that the dispute concerning Ayodhya should be settled on terms acceptable to the Muslim and Hindu communities. Although the Babri Masjid case can be partially settled by legal means, it must be approached with an exceptional degree of caution and an equally exceptional degree of wisdom. Calling into question situations and rights that are rooted in the distant past is likely to open the door to a sequence of events which could have unforeseeable consequences and in particular lead, through acts of violence performed in the name of an extremist conception of religion, to disorders in various parts of India, the news of which, as it spreads internationally and, more especially, throughout the region, may affect peace and security within the region. The most logical solution would seem to be to restore these places of worship as they were before the riots occurred - unless the religious communities concerned decide to effect a symbolic exchange as a means of cooling passions and reducing tensions. The authorities must remain on the watch to prevent the recurrence of such traumatic incidents, which are sources of division and hate between communities. It is important that the Indian authorities should be fully aware that the dangers in this area are not purely theoretical.

94. The financial dependence of polit. al and religious movements on foreign countries is obviously fraught with consequences at all levels.

95. Schools in particular should be protected against all forms of political and ideological indoctrination.

96. Education can play a vital role in preventing intolerance, discrimination, hate and violence (including violence motivated by extremism) by creating and disseminating a culture of tolerance among the masses and the most disadvantaged segments of the population. It can make a decisive contribution to the assimilation of values based on human rights by the use of school curricula and textbooks reflecting principles of tolerance and non-discrimination. This approach has already been adopted to some extent by the Indian authorities in the education sector through dissemination of the values of tolerance and mutual respect, as was confirmed during the course of the mission during visits to schools, in discussions with pupils and teachers and by the perusal of textbooks. However, this approach must be adopted throughout the country to cover India's entire private and public school system in order to develop the awareness of the masses. It is of vital importance that human rights and tolerance should become the concern of all and not remain the exclusive preserve of the élite.

97. The Special Rapporteur also recommends that the Centre for Human Rights should provide advisory services on the organization at the federal and State level of training courses for teachers in preschool, primary or basic and secondary educational establishments to make them aware of the importance of teaching the principles of tolerance and non-discrimination based on religion and belief.

98. As regards Jammu and Kashmir and Punjab, the Special Rapporteur urges all the parties concerned - official and non-official, national and foreign - to act calmly and refrain from exacerbating religious problems to ensure that immutable religious principles are not affected by political considerations at the expense of the religious rights of the communities and, more generally, of tolerance and non-discrimination based on religion or belief.

Annex I

A BRIEF ON AYODHYA

(Information provided by the Indian authorities)

1. ... Following the demolition of the Ram Janma Bhoomi-Babri Masjid structure at Ayodhya on 6 December 1992, the Government acquired the disputed area and suitable adjacent land through the Acquisition of Certain Area at Ayodhya Ordinance Act, 1993. At the same time, the Government also made a Special Reference to the Hon'ble Supreme Court for consideration and opinion on the question "Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhoomi-Babri Masjid (including the premises on the inner and outer courtyards of such structure) in the area of which the structure stood?" The constitutional validity of the Acquisition Act and the maintainability of the Special Reference was challenged before the Supreme Court. A five-judge Bench headed by the Chief Justice of India heard arguments in the above proceedings. The Bench in its majority judgement dated 24 October 1994 upheld the Acquisition Act, except for Section 4 (3) thereof, which it struck down. The Supreme Court, however, returned the Presidential Reference unanswered. As per the judgement, the pending suits and other proceedings relating to the disputed area, which had abated by virtue of Section 4 (3) of the Act, have been revived for final adjudication of the dispute by the Allahabab with effect from 12 December 1994. The Court is at present continuing with the examination/cross examination of witnesses in the title suits. The whole matter is thus sub judice.

2. In the light of the above Supreme Court judgement, the vesting of the "disputed area" in the Central Government is limited as a Statutory Receiver with the duty for its management and administration requiring maintenance of the status quo therein till its further vesting in terms of the adjudication made in the suits for implementation of the final decision therein; the disputed area cannot be handed over to any body for the construction of a temple, mosque or any other structure except as decided by the court in the title suits; the right of the parties to worship in the disputed area stands frozen in the position that obtained on 7 January 1993, the day of the promulgation of the Acquisition of the Certain Area at Ayodhya Ordinance, 1993 (now replaced by an Act of Parliament).

3. In compliance with the above-mentioned Supreme Court judgement, the status quo as on the date of the acquisition of the area is being maintained in the "disputed area", and appropriate arrangements have been made for this purpose. The right of worship is restricted to in whatever form it existed on that date and its scope has not enlarged thereafter.

4. After the demolition of the structure, Government decided that the strongest action possible under the law would be taken to book the culprits who committed various offences connected with the demolition of the structure on 6 December 1992, including those who incited and agitated the offences. The manner in which the event of 6 December 1992 took place gave rise to suspicion of a deep-rooted conspiracy on the part of the perpetrators of this crime. The Government is determined to take all possible steps to unveil the

conspiracy, if any, in all its ramifications and to relentlessly pursue the offenders till they are brought to book. With this view, the Central Bureau of Investigation (CBI) was entrusted with the investigations into the offences connected with the demolition of the disputed structure on 6 December 1992. After having carried out these investigations the CBI filed a combined charge-sheet against 40 persons before the Special Court at Lucknow. The Special Court passed the committal order and sent the case to the Judge of the Court of Special Additional Sessions at Lucknow, for trial and proceedings. In the meantime, the CBI with the permission of the Court, conducted further investigations in the case and filed a supplementary charge-sheet before the Special Additional Chief Judicial Magistrate, Lucknow, against nine more persons on 11 January 1996. The Court has taken cognizance of the additional charge-sheet. The 49 persons charged include prominent leaders of the Bhartiya Janta Party, Shiv Sena, Bajrang Dal and the Ishwa Hindu Parishad.

5. The Central Government also appointed the Liberhan Ayodhya Commission of Inquiry to inquire, inter alia, into the sequence of events leading to, and all the facts and circumstances relating to, the occurrences in the Ram Janmabhumi (birthplace of Ram)-Babri Masjid (Babri mosque) complex at Ayodhya on 6 December 1992. The tenure of the Commission has been extended from time to time. It is presently up to 31 March 1997. The Government has requested the Commission to complete the inquiry within the extended tenure.

6. On the basis of evidence of the Central Government and other records with the Commission, the Commission issued Section 8B notices (Commission of Inquiry Act) to 41 persons and to 5 organizations, namely, the Bhartiya Janta Party (BJP), Bajrang Dal, Vishwa Hindu Parishad (VHP), Rashtriya Swayam-Sewak Sangh (RSS) and Shiv Sena. The 41 persons are 28 political/religious leaders and 13 officers of the Government of Uttar Pradesh. Most of the noticees submitted applications to the Commission requesting, inter alia, that it supply the relevant material/evidence on the basis of which the 8B notices had been issued to them. The Commission rejected these applications. Seventeen of the noticees filed as many as six written petitions against the 8B notices and the order of the Commission rejecting their applications in the Delhi High Court and one such petition in the Lucknow Bench of Allahabab High Court. The Delhi High Court in its judgement dated 23 July 1996 upheld both the order and the 8B notices of the Commission, except that part of the notice which requires the noticees to state their case on affidavit and file documents, if any, in support of their case. This part of the notice was struck down by the Court. Accordingly, the parties filed their lists of witnesses. The Commission, after scrutiny, has issued a press note summoning approximately 22 witnesses. The cross-examination of these witnesses is continuing.